

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ALBERT A. ELLIS, JR. }

For Appellant: Albert A. Ellis, Jr.
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John D. Schell
Counsel

O P I N I O N ;

This appeal is made pursuant to section 18954 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Albert A. Ellis, Jr., against a proposed assessment of additional personal income tax in the amount of \$473.10 for the year 1967, plus interest in the amount of \$118.28,

Appellant filed a California personal income tax return for 1967 and paid self-assessed tax of \$912. Upon a routine audit of this return, respondent redetermined the tax to be \$756.40, indicating an overpayment of \$155.60. The latter amount was credited against appellant's 1968 income tax liability. Upon further review respondent discovered certain errors in its first determination and recomputed the correct tax for 1967 to be \$1,229.50. Respondent thereupon assessed a tax "deficiency" in the amount of \$473.10, plus interest.

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Subsequent to the filing of this appeal appellant conceded his liability for the additional tax and paid the principal amount. The only issue remaining to be decided is the propriety of imposing interest in the amount of \$118.28 upon the proposed assessment of additional tax.

This board has previously held that the imposition of interest upon a deficiency is mandatory under section J-8688 of the Revenue and Taxation Code. (Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.) Appellant appears to argue, however, that not all of the amount assessed constitutes a deficiency. While the term "deficiency" is not specifically defined in the California Personal Income Tax Law, its meaning can be derived from section 18583 of the Revenue and Taxation Code. That section provides:

If the Franchise Tax Board determines that the tax disclosed by the original return is less than the tax disclosed by its examination, it shall mail notice or notices to the taxpayer of the deficiency proposed to be assessed.

From the above language it is evident that a deficiency is the amount by which respondent's determination of the tax exceeds the amount determined by the taxpayer on his original return. In this case the amount eventually determined by respondent to be the correct amount of the tax (\$1,229.50) exceeded the amount determined by the appellant on his original return (\$912) by \$317.50. Therefore only this latter amount is properly subject to interest under section 18688.

The balance of the total assessment was due to respondent's erroneous determination in the first instance that appellant had overpaid his tax. It was this amount, i.e., \$155.60, which respondent erroneously credited against appellant's 1768 income tax liability. Although, that part of the assessment is not a deficiency and thus not subject to the interest imposed by section 18688, this does not mean that the amount of the erroneous credit is not subject to interest. Section 19111 of the Revenue and Taxation Code deals with the collection of erroneous refunds and credits, and it is provided therein that interest shall be paid on any such amounts from the date the refund was made or the credit allowed. We must therefore reject appellant's argument that the dual nature of this assessment precludes

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the imposition of interest upon all or any component part of the additional tax assessment. Based upon the above analysis we must sustain respondent's action in this matter.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Albert A. Ellis, Jr., against a proposed assessment of additional personal income tax in the amount of \$473.10 for the year 1967, plus interest in the amount of \$118.28, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1972, by the State Board of Equalization.

John W. Lynch, Chairman
Paul H. Kline, Member
Robert H. Kline, Member
William C. Schmidt, Member
_____, Member

ATTEST:

W. W. Lemp, Secretary